

**FILED**

**FOR PUBLICATION**

MAR 19 2012

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**UNITED STATES OF AMERICA,**

No. 09-10139

Plaintiff - Appellant,

D.C. No. 4:07-cr-01207-RCC-CRP-1

v.

**HOWARD WESLEY COTTERMAN,**

**ORDER**

Defendant - Appellee.

**KOZINSKI**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.